

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**In the Matter of**

**Amendment of the Commission's Rules  
to Establish Part 27, the Wireless  
Communications Service ("WCS")**

**GN Docket No. 96-228**

**REPLY COMMENTS  
OF THE  
NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS**

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Respectfully submitted,

**THE NATIONAL ASSOCIATION OF  
BLACK OWNED BROADCASTERS, INC.**

By its attorneys,

James L. Winston  
Lolita D. Smith  
Rubin, Winston, Diercks, Harris  
& Cooke  
1333 New Hampshire Avenue, N.W.  
Suite 1000  
Washington, D.C. 20036  
(202) 861-0870

Lois E. Wright  
Vice President and Corporate Counsel  
Inner City Broadcasting Corporation  
Three Park Avenue  
40th Floor  
New York, NY 10014  
(212) 592-0408

January 8, 1997

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**REPLY COMMENTS  
OF THE  
NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS**

The National Association of Black Owned Broadcasters ("NABOB") hereby submits its Reply Comments in the above captioned proceeding, Notice of Proposed Rulemaking, FCC 96-441, (released November 12, 1996.)

**I. INTRODUCTION AND SUMMARY**

NABOB is the trade association representing the interests of the African American owned commercial television and radio stations and cable television systems throughout the United States. In that capacity, NABOB has two principal objectives: (1) to increase the number of African American owners of telecommunications facilities and (2) to improve the business climate in which African American owned telecommunications facilities operate. NABOB has an interest in the development of policies to create new ownership opportunities in the telecommunications industry.

NABOB shares many of the concerns of the Cellular Telecommunications Industry Association ("CTIA") regarding allocation of spectrum for Wireless Communications Services

("WCS"). However, there are some specific proposals NABOB seeks to bring to the Commission's attention, because of the potential effect the WCS may have on minority-owned small businesses. First, the Commission should allocate the spectrum in 5 MHz increments on a Basic Trading Area ("BTA") basis only. Second, there should be a specific allotment to Public Safety entities. If these proposals are not adopted, the allocation in the 2300 MHz band is likely to present a competitive disadvantage to minority-owned small businesses which have obtained licenses in other services which will compete with the WCS. In this regard, NABOB agrees with the views expressed by Commissioner Quello concerning possible prejudice to existing licensees which may result from offering new spectrum to potentially competitive wireless communications service providers. See Separate Statement of Commissioner Quello accompanying the above-captioned Notice of Proposed Rulemaking in this proceeding, November 12, 1996. Commissioner Quello was also mindful that a diversion of Commission resources to the WCS auction might impede or delay Commission processing of licenses for other wireless services, specifically successful bidders in the C block PCS auctions and the pending licensure of D, E, and F Block PCS winners.

After reviewing the concerns expressed by CTIA in their comments filed December 4, 1996, as well as the concerns expressed herein by NABOB, the Commission should give thoughtful consideration not only to the best use of the spectrum, but also to the effect that use will have on existing minority owned small business licensees.

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## **II. NABOB GENERALLY SUPPORTS THE COMMENTS FILED BY THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

CTIA notes that the Commission should preliminarily allocate a use or uses for the spectrum. The current proposal leaves to each WCS spectrum applicant the choice of what wireless services to provide. Although the Commission suggests flexibility should be provided to licensees obtaining this spectrum, flexibility should not provide a rationale by which to abstain from allocation responsibilities. NABOB joins CTIA in advocating that the Commission provide a preliminary service allocation and subsequently allow flexibility as the band develops.

Among the other proposals supported by CTIA, NABOB favors spectrum disaggregation, geographic partitioning and adopting build out requirements to guard against spectrum warehousing. However, contrary to the proposal of CTIA, NABOB proposes that the Commission allocate the spectrum in 5 MHz blocks on a BTA basis. Just as CTIA argued, it is much easier to cure underassignment than overassignment in the market. Smaller geographic area and frequency block licenses will allow WCS licensees to aggregate licenses to create larger geographic areas and frequency blocks if desired, but allocation of larger geographic areas and frequency block licenses will preclude many minority-owned small businesses from being able to bid. Five MHz blocks will also diminish the competitive disadvantage to existing small, minority-owned licensees, as discussed below.

### **III. THE COMMISSION SHOULD ALLOCATE WCS SPECTRUM IN A MANNER THAT DOES NOT IMPOSE A COMPETITIVE DISADVANTAGE TO MINORITY OWNED SMALL BUSINESSES WHO HOLD LICENSES IN OTHER BLOCKS**

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It is important for the Commission to consider that small, minority-owned businesses which may hold licenses in other wireless services, may not be financially able to take advantage of the new WCS spectrum offering. In this regard, potential competitive parity is not competitive parity in fact. As noted above, Commissioner Quello expressed his concern regarding prejudice to existing licensees which may result from offering new spectrum to potentially competitive wireless communications service providers. Since the WCS spectrum will enjoy the benefits of regulatory flexibility to an extent greater than blocks of spectrum already won by existing licensees, the Commission must be careful not to create competitive advantages for WCS licensees. Commissioner Quello was also mindful of avoiding the diversion of resources to the WCS auction, which may result in impeding or delaying Commission processing of licenses in other wireless services, such as, the pending licensure of D, E, and F Block PCS winners. However, it should be noted that, unlike CTIA, NABOB does not support raising the CMRS spectrum cap, and instead supports applying the existing cap to the WCS spectrum. In this regard, NABOB notes that the spectrum cap may encourage larger CMRS companies to take non attributable interests in minority owned small businesses to bid on WCS spectrum.

**IV. PUBLIC SAFETY NEEDS SHOULD FACTOR PROMINENTLY INTO ANY REALLOCATION OF THE WCS SPECTRUM GIVEN THE REPORT BY THE PUBLIC SAFETY WIRELESS ADVISORY COMMITTEE AND EXPRESSED CONGRESSIONAL INTENT**

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Section 3001 of the Omnibus Consolidated Appropriations Act, 1997, P.L. 104-208, 110 Stat. 3009 (1996) ("Section 3001") requires that the Commission consider "the needs of public-safety radio services." The Commission has spent a great deal of time in recent years looking for adequate spectrum for public safety users. Section 3001 clearly allows the Commission to allocate spectrum in the 2300 MHz band for public safety users. In addition, the Public Safety Wireless Advisory Committee ("PSWAC") issued a final report outlining the needs of public safety agencies. See Final Report of the Public Safety Wireless Advisory Committee to the Federal Communications Commission and the National Telecommunications and Information Administration, September 11, 1996 at 19-20. PSWAC's recommendations, combined with expressed Congressional intent to provide for public safety entities, provides two compelling reasons for the Commission to allocate spectrum to public safety agencies generously. NABOB joins CTIA in supporting meeting the unmet needs of public safety agencies. Commissioner Quello indicated in his statement that a unique aspect of this reallocation mandate from Congress was that for the first time Congress directed the Commission to take into account the needs of public safety providers. With such empirical data from PSWAC and a clear Congressional mandate, the Commission would be remiss if it failed to allocate a substantial amount of spectrum to public safety entities. NABOB submits that an allocation of 10-15 MHz of the 2300 MHz spectrum should be allocated to public safety users.

## **V. THE WCS AUCTION PROCEDURES MUST INCLUDE INCENTIVES FOR SMALL BUSINESSES**

In the auction of WCS spectrum, the Commission must carry forward its policies to promote small business opportunities.<sup>1</sup> While it appears that Section 3001 may not permit installment payments, Section 3001 does permit small business bidding credits. Aggressive use of bidding credits should be adopted in the WCS auction, particularly if no installment payments are allowed. Moreover, the licenses should be auctioned in 5 MHz frequency blocks on a BTA basis to allow bidding by small minority-owned businesses. The Commission should not choose larger geographic areas or larger frequency block sizes based upon a mistaken notion that such allotments are needed to expedite the auction. With 5 MHz licenses allotted on a BTA basis, the Commission can expedite the auction by moving to daily multi-round bidding earlier in the auction than in its prior auctions. Given that most potential WCS bidders will have participated in previous auctions, the auction can be expedited without foreclosing opportunities for small minority-owned bidders. The Commission can accommodate the need to provide opportunities for small minority owned businesses, and also accommodate the bidding timetable established by Section 3001.

## **VI. CONCLUSION**

NABOB agrees with many of the sentiments of CTIA in advocating that the Commission initially allocate the WCS spectrum and provide spectrum to public safety providers. NABOB

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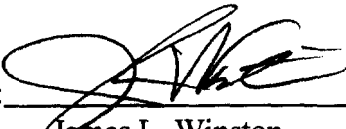
<sup>1</sup>NABOB would propose that the Commission include rules in the WCS auction to promote ownership opportunities for minorities. However, given that the Commission has not completed an Adarand-type study, prior Commission precedent indicates that the Commission will not adopt such policies in the WCS.

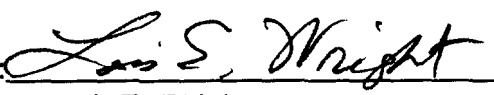


further proposes that the Commission allot the WCS spectrum in 5 MHz blocks on a BTA basis. Allotment in this manner will allow development of the spectrum without presenting unacceptable competitive disadvantages to existing minority-owned small businesses. Therefore, NABOB urges the Commission to adopt the proposals discussed herein in assigning the 2300 MHz band in a manner that is consistent with the public interest goals of Section 309(j) and Section 3001.

Respectfully submitted,

**THE NATIONAL ASSOCIATION OF  
BLACK OWNED BROADCASTERS, INC.**

By:   
James L. Winston  
Lolita D. Smith  
Rubin, Winston, Diercks,  
Harris & Cooke  
1333 New Hampshire Avenue, N.W.  
Suite 1000  
Washington, D.C. 20036  
(202) 861-0870

By:   
Lois E. Wright  
Vice President and Corporate Counsel  
Inner City Broadcasting Corporation  
Three Park Avenue  
40th Floor  
New York, NY 10014  
(212) 592-0408

January 8, 1997

## **CERTIFICATE OF SERVICE**

I, Kathy Nickens, a secretary in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L.L.P. hereby certify that on January 8, 1997, true copies of the foregoing "Reply Comments" were hand delivered to the following:

Hon. Reed E. Hundt  
Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, D.C. 20554

Hon. James H. Quello  
Federal Communications Commission  
1919 M Street, N.W.  
Room 802  
Washington, D.C. 20554

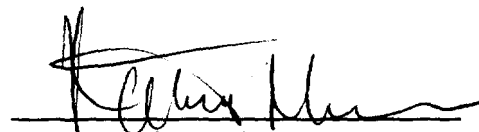
Hon. Susan Ness  
Federal Communications Commission  
1919 M Street, N.W.  
Room 832  
Washington, D.C. 20554

Hon. Rachelle B. Chong  
Federal Communications Commission  
1919 M Street, N.W.  
Room 844  
Washington, D.C. 20554

Michelle Farquar  
Chief, Wireless Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 5002  
Washington, D.C. 20554

Tom Mooring  
Office of Engineering and Technology  
Federal Communications Commission  
2000 M Street, N.W.  
Room 433A  
Washington, D.C. 20554

Matthew Moses  
Joshua Roland  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 5322  
Washington, D.C. 20554



Kathy Nickens